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Legal Opposition May Be Mounting Against Freeway Completion

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MESA, Ariz. -- Despite state and local laws prohibiting freeway construction on mountain preserves without public approval, transportation officials don't plan to ask voters before leveling a portion of South Mountain to complete Loop 202.

Arizona Department of Transportation and Phoenix city attorneys say those laws don't apply to the situation at hand.

ADOT has chosen a path for the planned South Mountain Freeway leg of Loop 202 that would require cutting through mountain ridges at depths of up to 220 feet inside South Mountain Park, west of Ahwatukee Foothills.

But area residents are mounting a legal opposition strategy that could include a no-excavation-without-representation argument, based primarily on Phoenix city code amendments approved by voters in the mid-1980s.

The resident group, called Protecting Arizona's Resources and Children, says Phoenix is prohibited from turning over any part of the preserve to ADOT for freeway construction unless such action is approved by a majority of city voters.

One section of the ordinance passed by voter initiative in 1986 states that no preserve land "shall be sold, traded, alienated, redesignated, leased, or otherwise deleted or removed from the Mountain Preserve except by approval of a majority of electors voting thereon."

But Phoenix City Attorney Gary Verburg said the code sections protecting mountain preserves do not preclude a state agency such as ADOT from taking park land for use as a freeway.

"The reality is that the freeway isn't an undertaking by the city; it's an undertaking by the state," Verburg said. "There might be defenses to it, but it's a very problematic lawsuit."

To complete the 22-mile, \$1.7 billion South Mountain Freeway project as planned, ADOT would have to bulldoze and blast through 32 acres on the preserve's southwestern edge.

Any other available path would have required an even greater impact on the park, according to transportation officials.

Howard Shanker, a Tempe environmental attorney representing PARC, agrees that a Phoenix ordinance would not preclude ADOT from condemning the preserve land.

However, Shanker said Phoenix cannot actively convey the land to ADOT without triggering the vote requirement.

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